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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
11

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 HANI ZEINI,

17 Defendant.

Case No. 2:18-cv-08103 (JFW) (SKx)

DISCOVERY MATTER

[Discovery Document: Referred to
Magistrate Judge Steve Kim]

**STIPULATED PROTECTIVE
ORDER**

1 1. PREAMBLE

2 A. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth in
12 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a party
15 seeks permission from the court to file material under seal.

16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve trade secrets, valuable research, development,
18 commercial, financial, technical and/or proprietary information for which special
19 protection from public disclosure and from use for any purpose other than
20 prosecution of this action is warranted. Such confidential and proprietary materials
21 and information consist of, among other things, confidential business or financial
22 information, information regarding confidential business practices, or other
23 confidential research and development information, information otherwise generally
24 unavailable to the public, or which may be privileged or otherwise protected from
25 disclosure under state or federal statutes, court rules, case decisions, or common
26 law. Accordingly, to expedite the flow of information, to facilitate the prompt
27 resolution of disputes over confidentiality of discovery materials, to adequately
28 protect information the parties are entitled to keep confidential, to ensure that the

1 parties are permitted reasonable necessary uses of such material in preparation for
2 and in the conduct of trial, to address their handling at the end of the litigation, and
3 serve the ends of justice, a protective order for such information is justified in this
4 matter. It is the intent of the parties that information will not be designated as
5 confidential for tactical reasons and that nothing be so designated without a good
6 faith belief that it has been maintained in a confidential, non-public manner, and
7 there is good cause why it should not be part of the public record of this case.

8
9 2. DEFINITIONS

10 2.1 Action: The action pending in the United States District Court for the
11 Central District of California entitled *SEC v. Zeini*, Case No. 2:18-cv-8103.

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this Action and
11 have appeared in this Action on behalf of that party or are affiliated with a law firm
12 which has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation
19 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.
7 However, the protections conferred by this Order do not cover the following
8 information: (a) any information that is in the public domain at the time of
9 disclosure to a Receiving Party or becomes part of the public domain after its
10 disclosure to a Receiving Party as a result of publication not involving a violation of
11 this Protective Order, including become part of the public record through trial or
12 otherwise; (b) any information known to the Receiving Party prior to the disclosure
13 or obtained by the Receiving Party after the disclosure from a source who obtained
14 the information lawfully and under no obligation of confidentiality to the
15 Designating Party; and (c) any information or materials produced to a Receiving
16 Party prior to March 1, 2019.

17 Notwithstanding any other provision contained herein, this Protective Order
18 shall not limit or otherwise abrogate the authority of Plaintiff Securities and
19 Exchange Commission (“SEC”) to use, disclose, or retain any materials to the extent
20 permitted or required by law, including, but not limited to, making its files available
21 to other government agencies, or other persons or entities identified in Section H of
22 SEC Form 1662 (“Routine Uses of Information”) without notifying or seeking
23 permission from the Designating Party.

24 Any use of Protected Material at trial shall be governed by the orders of the
25 trial judge. This Order does not govern the use of Protected Material at trial.
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1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10
11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection under
14 this Order must take care to limit any such designation to specific material that
15 qualifies under the appropriate standards. The Designating Party must designate for
16 protection only those parts of material, documents, items, or oral or written
17 communications that qualify so that other portions of the material, documents,
18 items, or communications for which protection is not warranted are not swept
19 unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations
21 that are shown to be clearly unjustified or that have been made for an improper
22 purpose (*e.g.*, to unnecessarily encumber the case development process or to impose
23 unnecessary expenses and burdens on other parties) may expose the Designating
24 Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (*e.g.*, paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
11 contains protected material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (*e.g.*, by making appropriate markings in the margins).

14 A Party or Non-Party that makes original documents available for inspection
15 need not designate them for protection until after the inspecting Party has indicated
16 which documents it would like copied and produced. During the inspection and
17 before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
19 documents it wants copied and produced, the Producing Party must determine which
20 documents, or portions thereof, qualify for protection under this Order. Then, before
21 producing the specified documents, the Producing Party must affix the
22 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
23 portion or portions of the material on a page qualifies for protection, the Producing
24 Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
25 markings in the margins).

26 (b) for testimony given in depositions, that the Designating Party
27 identify the Disclosure or Discovery Material on the record, before the close of the
28 deposition, all protected testimony.

1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on
3 the exterior of the container or containers in which the information is stored the
4 legend “CONFIDENTIAL.” If only a portion or portions of the information
5 warrants protection, the Producing Party, to the extent practicable, shall identify the
6 protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive
9 the Designating Party’s right to secure protection under this Order for such material.
10 Upon timely correction of a designation, the Receiving Party must make reasonable
11 efforts to assure that the material is treated in accordance with the provisions of this
12 Order.

13 14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time. Unless a prompt challenge to a
17 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
18 substantial unfairness, unnecessary economic burdens, or a significant disruption or
19 delay of the litigation, a Party does not waive its right to challenge a confidentiality
20 designation by electing not to mount a challenge promptly after the original
21 designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be on
25 the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
27 parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it is
2 entitled under the Producing Party's designation until the Court rules on the
3 challenge.

4
5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
7 disclosed or produced by another Party or by a Non-Party in connection with this
8 Action only for prosecuting, defending, or attempting to settle this Action. Such
9 Protected Material may be disclosed only to the categories of persons and under the
10 conditions described in this Order. When the Action has been terminated, a
11 Receiving Party must comply with the provisions of section 13 below (FINAL
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this Action, as
21 well as employees of said Outside Counsel of Record to whom it is reasonably
22 necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of
24 the Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this Action and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

- 1 (e) court reporters and their staff;
- 2 (f) professional jury or trial consultants, mock jurors, and Professional
- 3 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 5 (g) the author or recipient of a document containing the information or
- 6 a custodian or other person who otherwise possessed or knew the information;
- 7 (h) during their depositions, witnesses, and attorneys for witnesses, in
- 8 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
- 9 party requests that the witness sign the form attached as Exhibit 1 hereto; and
- 10 (2) they will not be permitted to keep any confidential information unless they sign
- 11 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
- 12 agreed by the Designating Party or ordered by the court. Pages of transcribed
- 13 deposition testimony or exhibits to depositions that reveal Protected Material may
- 14 be separately bound by the court reporter and may not be disclosed to anyone except
- 15 as permitted under this Stipulated Protective Order; and
- 16 (i) any mediator or settlement officer, and their supporting personnel,
- 17 mutually agreed upon by any of the parties engaged in settlement discussions.
- 18

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED

20 IN OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation

22 that compels disclosure of any information or items designated in this Action as

23 “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification

25 shall include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or

27 order to issue in the other litigation that some or all of the material covered by the

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1 subpoena or order is subject to this Protective Order. Such notification shall include
2 a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in this
7 action as “CONFIDENTIAL” before a determination by the court from which the
8 subpoena or order issued, unless the Party has obtained the Designating Party’s
9 permission. The Designating Party shall bear the burden and expense of seeking
10 protection in that court of its confidential material and nothing in these provisions
11 should be construed as authorizing or encouraging a Receiving Party in this Action
12 to disobey a lawful directive from another court.

13
14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
15 PRODUCED IN THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a
17 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
18 produced by Non-Parties in connection with this litigation is protected by the
19 remedies and relief provided by this Order. Nothing in these provisions should be
20 construed as prohibiting a Non-Party from seeking additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to
22 produce a Non-Party’s confidential information in its possession, and the Party is
23 subject to an agreement with the Non-Party not to produce the Non-Party’s
24 confidential information, then the Party shall:

25 (1) promptly notify in writing the Requesting Party and the Non-
26 Party that some or all of the information requested is subject to a confidentiality
27 agreement with a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this Action, the relevant discovery request(s), and a reasonably
3 specific description of the information requested; and

4 (3) make the information requested available for inspection by
5 the Non-Party, if requested.

6 (c) If the Non-Party fails to seek a protective order from this court
7 within 14 days of receiving the notice and accompanying information, the Receiving
8 Party may produce the Non-Party's confidential information responsive to the
9 discovery request. If the Non-Party timely seeks a protective order, the Receiving
10 Party shall not produce any information in its possession or control that is subject to
11 the confidentiality agreement with the Non-Party before a determination by the
12 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
13 expense of seeking protection in this court of its Protected Material.

14
15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
20 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
21 persons to whom unauthorized disclosures were made of all the terms of this Order,
22 and (d) request such person or persons to execute the "Acknowledgment and
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24
25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other protection,

1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order that provides for production without
4 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
5 as the parties reach an agreement on the effect of disclosure of a communication or
6 information covered by the attorney-client privilege or work product protection, the
7 parties may incorporate their agreement in the stipulated protective order submitted
8 to the court.

9
10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in this
16 Stipulated Protective Order. Similarly, no Party waives any right to object on any
17 ground to use in evidence of any of the material covered by this Protective Order.

18 12.3 Filing Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
20 only be filed under seal pursuant to a court order authorizing the sealing of the
21 specific Protected Material at issue. If a Party's request to file Protected Material
22 under seal is denied by the court, then the Receiving Party may file the information
23 in the public record unless otherwise instructed by the court.

24
25 13. FINAL DISPOSITION

26 After the final disposition of this Action, as defined in paragraph 4, within 60
27 days of a written request by the Designating Party, each Receiving Party must return
28 all Protected Material to the Producing Party or destroy such material. As used in

1 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
2 summaries, and any other format reproducing or capturing any of the Protected
3 Material. Whether the Protected Material is returned or destroyed, the Receiving
4 Party must submit a written certification to the Producing Party (and, if not the same
5 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
6 (by category, where appropriate) all the Protected Material that was returned or
7 destroyed and (2) affirms that the Receiving Party has not retained any copies,
8 abstracts, compilations, summaries or any other format reproducing or capturing any
9 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
11 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
12 reports, attorney work product, and consultant and expert work product, even if such
13 materials contain Protected Material. Any such archival copies that contain or
14 constitute Protected Material remain subject to this Protective Order as set forth in
15 Section 4 (DURATION). Unlike private litigants, the SEC has separate and
16 additional document retention obligations mandated by statutes, including, but not
17 limited to, the following: (1) 18 U.S.C. Section 641 and 2017; (2) 44 U.S.C.
18 Chapters 21, 29, 31, and 33; and (3) 36 C.F.R. Parts 1220-1239. As a result, this
19 paragraph shall not apply to any Protected Material in the possession of the SEC. In
20 addition, nothing in this Protective Order shall restrict or limit the SEC from
21 retaining any materials to the extent required by law.

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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 DATED: March 18, 2019

7
8 /s/ Amy S. Longo
9 AMY S. LONGO
10 *Attorneys for Plaintiff*

11 DATED: March 18, 2019

12
13 /s/ Matthew A. Macdonald
14 MATTHEW A. MACDONALD
15 *Attorneys for Defendant*

16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

17 DATED: March 19, 2019

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21 HONORABLE STEVE KIM
22 UNITED STATES MAGISTRATE JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its
5 entirety and understand the Stipulated Protective Order that was issued by the
6 United States District Court for the Central District of California on [date] in the
7 case of *Securities and Exchange Commission v. Hani Zeini*, Case No. 2:18-cv-8103
8 (JFW) (SKx). I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that
12 is subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print or
18 type full name] of _____ [print or type
19 full address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this
21 Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

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26 Printed name: _____

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28 Signature: _____

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ATTESTATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), the undersigned hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in this filing's content and have authorized this filing.

DATED: March 18, 2019

/s/ Matthew A. Macdonald
Matthew A. Macdonald